IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1667

NADINE MONROE, FLOYD RICHARD MONROE and LISA MONROE, Petitioners.

versus

L. PATRICK GRAY, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, FRANK DULLY, HAROLD EISENBERG, ALBERT BILL, PHILIP DUNN, LOUIS WOOL, ANDREW BRAND, FRANCIS LONDREGAN, GEORGE GILMAN, IGOR SIKORSKY, JR., individually, and as Commissioners of the Superior Court, and members of the New London County and Hartford County Grievance Committees in their official capacity; SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm; THOMAS TROLAND, ANGELO SANTANIELLO, individually, and as state referee and state judge, respectively; FLOYD MONROE and MARTIN GOTTESDIENER. Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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AND (cont.)

HARRY CONGDON, LOIS CONGDON, JANET CONGDON, and LOIS CONGDON CHURCHILL, and

KEVIN LEBOVITZ, KEVIN LEBOVITZ,JR., and ROXANNE LEBOVITZ, Petitioners,

versus

L. PATRICK GRAY, LOUIS WOOL, LOUIS MARUZO, ROY L. SMITH, MELVIN SCOTT, JOHN COLLERAN, JOHN ELLSWORTH, EDWARD LAVALLEE, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, individually, and as Commissioners of the Superior Court, and the members of the New London County Grievance Committee in their official capacity, SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm, ABRAHAM BORDON, individually and as state referee, WILLIAM BEEBE, JOHN MAZER, JOSEPH FIRGELEWSKI, JOHN MAXWELL; individually, and as Selectmen of the Town of Lyme; FRANK NASTI, JR. and STELLA PETRIE. Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled cases on February 14, 1977.

OPINIONS BELOW

The opinion of Judge M. Jos. Blumenfeld, United States District Court for the District of Connecticut, granting the motions to dismiss, June 25, 1976, is unreported, and is appended hereto at 2a. The opinion of the United States Court of Appeals for the Second Circuit, affirming the decision of the court below, is unreported and is appended hereto at 1a.

JURISDICTION

The judgment of the Second Circuit Court of Appeals was entered on February 14, 1977. The jurisdiction of this Court is invoked under 28 USC 1254 (1).

STATUTES INVOLVED

The statutes involved are the United States Constitution's First, Fifth, Eighth, Ninth, and Fourteenth Amendments; 15 USC § 1331 and 1343; 42 USC § 1983 and 1985, 1986, and 1988; and local Rule 2(d) U.S.D.C. for the District of Connecticut.

Statutes involved are Connecticut General Statutes, § 51-85, 51-90 and 52-434. The Constitution's Amendments, state statutes, and Rule of the local Federal Court are set forth in the Appendix, pp. 10a-17a.

QUESTIONS PRESENTED

1. Did the District Court commit reversible error in failing to recognize the conspiracy by lawyers, serving as judicially appointed grievance committees, to protect lawyers charged with malpractice from discipline before the state courts by refusing to properly investigate, and then illegally dismissing grievances that they should have returned to the court, to enable the State's Attorney to conduct the special, civil hearing of "presentment" and allow the court to determine the disposition of the complaint?

2. Did the District Court err in dividing the one conspiracy into three separate conspiracies, each of which was ruled insufficient, and failing to recognize the one conspiracy by the legal profession to (1) set minimum fees, (2) deny the consumers of legal services the benefits of advertising of legal services and litigants' rights and, (3) deny the public redress against errant lawyers?

3. Did the District Court commit reversible error in ruling that the plaintiffs have no right to ask for criminal prosecution or discipline of the defendant attorneys when criminal prosecution has never been an issue in these complaints; and unjustifiably

enlarging this ruling to deny the right to petition for discipline of attorneys, when the right to petition for discipline of attorneys is protected by Connecticut General Statutes, § 51-90?

4. Did the District Court commit reversible error in failing to recognize that the practice of law is an interstate trade and subject to antitrust law?

5. Did the District Court commit reversible error in providing judicial immunity for the presiding judge who, acting solely in an administrative capacity, refused to enforce the law and, instead, joined the conspiracy to protect errant lawyers by refusing to enforce the jurisdiction of the state court over (1) the grievances, (2) the lawyers charged with misconduct, and, (3) the local court-appointed grievance committee?

6. Did the District Court commit reversible error in refusing to declare the proceedings in the Monroe and Lebovitz state cases null and void when their attorneys have illegally, with gross disregard for the plaintiffs' constitutional rights, conspired to argue their cases before state referees, denying the plaintiffs a competent and impartial tribunal?

7. Did the District Court commit reversible error in ruling that defendant state referees have the same judicial immunity as judges when these over eighty-year-old judicial employees, no longer reviewed

and reappointed by the Connecticut General Assembly as are the regular judges, deemed incompetent by their mandated retirement at the age of seventy and dependent upon the goodwill of attorneys for their per diem employment, cannot possibly provide the essential of due process, an impartial and competent tribunal?

8. Did the District Court err in denying the plaintiffs' motion under local Rule 2 (d) to have the U.S. Attorney investigate the file compiled by the Discipline Committee of the American Bar Association against L. Patrick Gray and additional charges of misconduct that have surfaced since that time, including destruction of evidence, perjury and illegal wiretaps?

9. Did the District Court commit reversible error in ruling that the plaintiffs have recourse in the state courts when no appeal procedure exists, other than a presentment to court, for the conclusions made by the grievance committee, and the state court and judicial administrative officials refuse to act in the public interest?

10. Did the Court below, deny the plaintiffs a fair and impartial hearing of their unconventional pro se civil rights cause?

STATEMENT

These are suits by victims of legal malpractice whose attorneys conspired to deny their civil rights during litigation and who were then denied the right to petition

for discipline of errant attorneys by lawyers serving as the court-appointed county grievance committee who illegally dismissed the complaints filed with the local superior court.

In the Monroe case, a mother of two children in a contested divorce case involving community property of an estimated one million dollars was forced to accept, against her stated wishes and against state law, an eighty-two year old compulsorily retired judge as "referee", whose reputation and actions forced Nadine Monroe to accept decisions unfavorable to her and her two children, and who suffered from various other malpractices and dishonesties of lawyers, but was prevented from seeking discipline by the illegal refusal of the county "Grievance Committee" which acted under color of state law in denying her grievances. She sought the intervention of a state judge, provided for by law, but he failed his duty.

The Congdons are an elderly couple and their two daughters who attempted to defend themselves against neighbors, acting in concert with selectmen, who were trying to assume adverse possession of a strip of the Congdon farm which had been in the family since the mid-1800's, and who physically beat Mr. Congdon, causing severe loss of working ability, and sued Mr. Congdon for "assault and battery". The lawyers for the Congdons neglected and abondoned the processes they had brought to protect the Congdons. In addition, the Congdons were harassed and abused by their Town Selectmen

regarding the family cemetery and town taxes. The grievance the Congdons filed with the local grievance committee was dismissed without their knowledge, and their request for review has not been acted on.

In the Lebovitz case, defendant lawyers would not pursue the father's request for custody of his children, although the wife had administered illegal drugs to his children. The grievance filed with the New London County Grievance Committee charged that his lawyers had conspired to refer his case to a state referee, who refused to hear the case, ordering the lawyers to agree on the judgment which they did, giving the children to the mother. The grievance committee refused to make any disposal of the matter.

All plaintiffs suffered from the air of lawlessness maintained by the failure to discipline L. Patrick Gray, a local lawyer, member of the firm the plaintiffs opposed, who had committed many felonies, most of which he had admitted under oath, including:

a. Giving transcripts of illegal Watergate wire taps and FBI interrogations of Watergate witnesses to the White House so that they could be examined by Nixon and other Watergate coconspirators.

b. Delay of the FBI Watergate

investigation from June 23, 1972, for two weeks to give the White House culprits time to perfect a strong cover-up.

c. Violations of First Amendment and other rights of columnist Jack Anderson and his family, to discredit Anderson so his news articles would not be relied on, thus weakening our free press, and to punish Anderson for writings unfavorable to the Nixon administration, having Anderson and his family followed every day by CIA agents in 1972, ferreting out his news sources and discrediting or injuring them, attempting to destroy Anderson credibility by trying to administer drugs surreptiously so he would appear insane or a drug addict, and illegally wire tapping his telephone.

d. Transporting Watergate evidence across state lines, to his home in Stonington, Connecticut instead of turning it over to the Special Prosecutor or U. S. Attorney, then burning the evidence.

e. Authorizing and approving at least twelve warrentless burglaries against innocent individuals

and organizations investigated by the FBI.

f. Ordering an unconstitutional "mail cover" on the headquarters of a legal political party.

g. Committing perjury in the U. S. Senate confirmation hearings for his appointment as permanent director of the FBI.

The Monroes, Congdons and Lebovitzs sought damages pursuant to the 14th Amendment and under 42 USC § 1983 on the grounds that the illegal actions of the defendants were in concert, under color of state law. They also sought injunctive relief against them under 28 USC § 1331 and 1343.

After the two Complaints were filed, the plaintiffs moved to supplement their Complaints to include the additional antitrust charges in United States v. American Bar Association, No. 76-1182, filed in the District Court of Columbia, on June 25, 1976.

The Complaints were dismissed on motion in the District Court which ruled, in part, that the antitrust allegations were insufficient, although the motion to supplement was not decided, and the supplement contained all elements of the antitrust claims of United States v. American Bar Association.

Despite the fact that the pro se plaintiffs alleged, were prepared to prove, one

conspiracy by the legal establishment acting in bad faith to dispense justice with the "ability to pay" for the profit and convenience of the conspirators, the District Court divided the singly conspiracy into three separate conspiracies, found each subconspiracy insufficient for failure to state claims upon which relief could be granted. Appendix, 2a.

REASONS FOR GRANTING THE WRIT

The Court should grant this Writ for Certiorari because it raises, for the first time, the question of denial of due process by malpracticing attorneys and the continuing conspiracy to deny the public redress against these errant lawyers.

1. The approval of the Court below, without opinion, of the District Court's dismissal of the pro se plaintiffs' antitrust claims which tracked exactly the claim of the Justice Department in U. S. v. American Bar Association, makes a travesty of the plain meaning of Title 15 USC and of the suit against the American Bar Association, as the conduct of the instant defendants in denying due process of law to the various plaintiffs paralleled the behavior of their coconspirators in U. S. v. American Bar Association. In U. S. v. American Bar Association, the instant defendants, described as coconspirators, are accused of several of the overt acts described in the instant Complaints and Supplements. The defendants here, as well as the American Bar

Association, have denied lawyers the right to advertise their services as well as the constitutional rights of litigants, the New London County legal establishment has compiled minimum fee schedules, (Goldfarb v. Virginia Bar, 95 S. Ct. 2008) and the plaintiffs as well as the general public, consumers of legal services, have suffered from these antitrust violations.

2. The Writ should be granted so that this Court may rule as to the participation of pro se aggrieved litigants in legal discipline. The Justices of this Court have commented strongly in recent times on the need for improved discipline. Chief Justice Burger has stated:

> Seventy-five to ninety per cent of American trial lawyers are incompetent or dishonest, or both. Address to American Trial Lawyers, Winter Meeting, 1967, quoted in Trial Lawyers' Guide, 1971, pp. 108-9.

> The public has felt the pain (of injustice from undisciplined lawyers) but they don't know what has caused it or what to do about it. Address to the American Bar Association Annual Convention, August, 1971.

> The Bar Association must provide better discipline of their members. Address to the American Bar Association Annual Meeting, 1971.

> For the last twenty years at least, the disciplining of lawyers has been almost nonexistent. Address to the National College of the State Judiciary, Nevada, September, 1974.

Retired Associate Justice Tom Clark has made himself equally clear:

> Some years ago I was asked to head an inquiry into the effectiveness of efforts by lawyers to discipline themselves. After a thorough investigation, our committee reported that the situation was a'national scandal'. It still is. (From Syndicated article, Boston Globe, August 11, 1974.)

3. The plaintiffs should have been permitted discovery since they have fulfilled the requirements of 42 USC § 1983 and 1985 by alleging that (a) there exists one conspiracy by members of the legal profession to deny civil rights and obstruct justice without fear of discipline by the court for the convenience and profit of members of the legal profession; the errant lawyers aware that they will be protected by their colleagues serving as the court-appointed grievance committees who refuse to process and return the grievances to the courts for further proceedings, in a Watergate-like cover-up; (b) that the court appointed grievance committee members are "state officers" acting under color of state law, Connecticut General Statutes, § 51-90;

(c) that the defendant lawyers are denying the plaintiffs their constitutionally guaranteed right to petition for redress of grievances, due process of law and equal protection of law and (d) discriminating against a class of nonlawyers, pro se litigants, filing grievances against the lawyers who have denied them their constitutionally guaranteed rights of due process during litigation. These complainants are injured again when the lawyer/members of the grievance committee, with gross disregard for the constitutional rights of the complainants, fail to investigate and return to the court the pro se grievances previously forwarded to them by the Clerk of the Superior Court.

4. The District Court acknowledged that under 42 USC 1983 the members of the court appointed grievance committees are "state officers" acting under color of state law but erred when it provided these committees with prosecutorial immunity. The members of the grievance committees are neither criminal nor civil prosecutors, they are merely a clerical body with mandated, ministerial duties defined by law. Connecticut General Statutes, § 51-90, that requires them to inquire into and investigate grievances and return them to the court for consideration. (See Appendix).

5. The District Court demonstrated its error by citing Linda R. S. v. Richard D., 410 U.S. 614, 619 (1973), in which the plaintiffs asked for an enlargement of an existing law so as to criminally prosecute

the defendant, to substantiate the ruling to dismiss. The cited case has no application whatsoever to these complaints. Criminal prosecution has never been an issue in these cases, and the instant plaintiffs ask for enforcement of an existing law, in present form, as interpreted in Greivance Committee v. Ennis, 84 Conn. 603, and In re Peck, 88 Conn. 456, both holding that initiation of discipline is not the exclusive domain of Grievance Committees. A presentment for discipline before the court is conducted by the State's Attorney and it is not a criminal or civil action or suit but a special hearing by the court into the conduct of one of its own officers, and the grievance committee is not a party to the hearing nor does it participate in the hearing. Grievance Committee v. Broder, 112 Conn. 263.

6. The District Court erred in not recognizing that the grievance committees do not have discretionary powers. Once the complaint is made, the state court controls the procedure and holds jurisdiction over the complaint. "Even if the grievance committee reprimands an attorney for a minor matter the superior court retains jurisdiction over the same complaint." In re Horwitz, 21 C.S. 364.

7. The District Court erred in ruling that the plaintiffs have no right to ask for discipline of attorneys. The federal and state constitutions, that apply to everyone, provide for the right to petition for redress of grievances. No special interest group

is excluded from, or protected from, these laws. The plaintiffs are asking for law enforcement so that disciplinary matters will be brought before the state court for consideration. The intent of Sec. 51-90 is to provide an impartial, independent body to investigate the grievance prior to "presentment" before the court by the State's Attorney. The entire procedure was provided to protect the public from persons unfit or unsafe to manage the legal affairs of others; to rule that the plaintiffs do not have a right to complain when the law is being broken is to deny them this protection.

8. The District Court has erred by failing to recognize that the grievance committee members have acted in bad faith by acting outside the scope of their mandated duties in dismissing grievances that should have been examined and returned to the court for consideration. (See Connecticut General Statutes Sec. 51-90, Appendix).

9. The District Court erred by failing to recognize that Connecticut lawyers are also state officers under 42 USC 1983. Although the members of the grievance committee already fulfill this requirement for the purposes of this suit, all lawyers in Connecticut are "state officers" by virtue of a state statute unique to this state, Connecticut General Statutes, Sec. 51-85, that provides that all lawyers upon admission to the bar shall become "Commissioners of the Superior Court"with special privileges not enjoyed by "officers of the court" in other states, including the power of signing

"presentments" for legal discipline.

10. The District Court erred in ruling that state referees are judges with judicial immunity when there are significant differences between a state referee and a judge. Connecticut General Statute, Sec. 52-434, provides that the Superior Court may refer no case to a state referee unless all parties agree. A competent and impartial tribunal is an essential element of due process of law, and state referees are neither. They are deemed incompetent by their forced retirement at 70 from the bench, many of these referees are serving up to the age of ninety, and as they are paid on a per diem basis, are dependent upon lawyers' good will to be selected for employment; they are pressured to please the lawyers and law firms that will choose to use their services frequently; obviously they are not impartial. To simultaneously provide an affluent retirement for the retired judges acting as state referees and control the outcome of their important cases, lawyers do not inform litigants that they are relinquishing their constitutional right to due process. Coercion used to divert cases to the state referees is reinforced by the court system that withholds the complicated, contested divorces from the regular court docket until the end of the judicial year or whenever the regular judge decides they will be heard. (In the meantime, the regular judges are rubberstamping the no-fault, uncontested divorces in open court with no delay.) Recent testimony before the

Connecticut General Assembly's Judiciary Committee indicate that the use of state referees instead of juries in the appeal of land condemnation awards have cost the taxpayers an estimated 62 million dollars because the state referees have increased the award at appeal in 99% of the cases at an average 64% increase. Obviously the appeal of an award at almost no risk to the land owner not only increased the payment by the state but generated employment for the state referees and hugely-profitable business for the legal profession.

11. The District Court erred in ruling that the presiding superior court judge has judicial immunity when judicial discretion is not an issue here. See Doe v. County of Lake, 399 F. Supp. 553. The judge in his administrative capacity refused to enforce the jurisdiction of the court over (1) the grievances, (2) the attorneys charged with misconduct and (3) the court-appointed grievance committee, thus failing to protect the public interest.

12. The District Court erred in ruling that the plaintiffs can seek relief in the state courts. The plaintiffs have exhausted all the avenues of relief of which they are aware, state statutes make no provision for appealing either the actions of the grievance committee or the judgment of the trial court, although state judges have allowed appeals from the decisions rendered on the "presentments." The plaintiffs have even attempted the passage of corrective legislation in the Connecticut General Assembly for the past

three years only to have their proposed law defeated by the lawyers in the legislature. Self discipline is not an effective method of control. Baker v. Carr, 82 S.Ct. 691.

13. The plaintiffs were further disadvantaged when subsequent appeals to higher state judicial officials, Superior Court Chief Judge, Chief Court Administrator and Chief Justice of the Supreme Court, by not only the public but by the Connecticut Bar Association, proved fruitless. The lawlessness existing in the Connecticut judicial system will continue to flourish unless this Court grants this petition for certiorari. This Court unanamously ruled in U. S. v. Nixon 94 S.Ct. 3090, that "no man is above the law." For this Court to deny this petition would allow the entire Connecticut legal profession to remain above the law. It is unrealistic for anyone to expect the public to respect and obey the law when the guardians of lawenforcement themselves do not respect and obey the law. Qui custodes ipso custodiat? Judicial administrators must be held accountable for their inaction. State "inaction" under color of law, i.e., state refusal to take indicated action to protect private rights or the public interest, is denial of due process of law. Civil Liberties and the Constitution, Chapter IV, Prof. Kauper, University of Michigan Law Press, 1966.

14. The District Court erred in disregarding the pleadings of the plaintiff pro se litigants without benefit of professional legal advice espousing a cause challenging the

legal profession, making serious constitutional and statutory claims, should be construed as broadly as possible and treated without regard to technicality. Haines v. Kerner, 92 S.Ct. 594, Jenkins v. McKeithen, 395 US 411, Puckett v. Cox 456 F2d 233, Picking v. Penna. Ry. 151 F2d 240. The criterion of a pro se civil rights complaint should be whether or not it "adequately advises the .... defendants of the acts of which plaintiff complaints. Further, said defendants have every right pursuant to the Federal Rules of Civil Procedure to seek discovery to determine the exact basis of plaintiff's complaint against them. .... defendants' motion to dismiss .... (are) denied, subject to renewal upon a specific showing of prejudice or harm accruing to them because of the manner in which the complaint is drafted." Cochran v. Patterson, C.A. 75-218-A, N. District of Ohio, Order, Oct. 20, 1975, unreported. These instant Complaints adequately advise the acts complained of. They should not be dismissed. Plaintiffs should be treated fairly; they should have been allowed to supplement their Complaint. They have been disadvantaged by their lack of training and experience and further disadvantaged by the harassment and intimidation tactics they have encountered from lawyers and the courts. The ruling to dismiss, by a hostile-appearing District Court Judge may be considered by the Congdons, who cannot obtain relief in state courts, a cultural assumption that lay persons do not have the right to challenge the legal profession. The refusal of the District Court to allow consolidation of

pleadings while ruling that the issues were identical, and the key defendants were common to both causes was particularly upsetting and injurious to the Congdons. They cannot understand why they are not permitted to make the same charges against the ABA's coconspirators as the United States has made, and that this Court granted certiorari to consider Bates v. Arizona, No. 76-316, ___ U. S. ___.

CONCLUSION

For the stated reasons, this Court should grant certiorari, and reverse and remand for further proceedings in light of Bates v. Arizona.

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

NADINE MONROE, ET AL
v. No. 76-7352
L. PATRICK GRAY, ET AL

HARRY CONGDON, ET AL
v. No. 76-7353
L. PATRICK GRAY, ET AL

Appeal for the United States District Court for the District of Connecticut.
M. Jos. BLUMENFELD, District Judge.

Before J. LUMBARD and WILLIAM H. TIMBERS, Circuit Court Judges and WHITMAN KNAPP, District Court Judge.

Argued February 14, 1977; no questions raised by the court.

Immediate affirmation of lower court ruling February 14, 1977 at conclusion of oral arguments, with costs to be taxed against the appellants.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

NADINE MONROE, et al
v. C.A. No. H76-91
L. PATRICK GRAY, et al

HARRY CONGDON, et al
v. C.A. No. H76-239
L. PATRICK GRAY, et al

Monroe v. Gray argued April 12, 1976, and dismissed cn motions June 25, 1976.

Congdon v. Gray filed June 14, 1976, and dismissed June 25, 1976.

Before M. Jos. BLUMENFELD, District Judge.

RULING ON MOTION TO DISMISS

The plaintiffs, Nadine Monroe and her two children, Floyd Richard and Lisa, have brought this action alleging two conspiracies to deprive them of their constitutional rights and one conspiracy in violation of the antitrust laws of the United States. The defendants are Floyd Monroe, Jr., Ms Monroe's ex-husband, Martin Gottesdiener, a Certified Public Accountant, 15 judges and attorneys and one law firm. Each of the defendants has filed a motion to dismiss the action.

A detailed examination of the 15-page amended complaint discloses three separable claims, each of which must be addressed individually. Conley v. Gibson, 355 US 41, (1975).[1]

I. The Divorce Conspiracy

The original conspiracy is alleged to have arisen during the divorce proceedings between the plaintiff, Ms Monroe, and her husband. The complaint alleges that Mr. Monroe, his Certified Public Accountant, Martin Gottesdiener, and his attorneys, Louis C. Wool and Andrew Brand, and their law firm, Suisman, Shapiro, Wool & Brennan, conspired with Thomas E. Troland, the Referee of the New London County Superior Court who presided at the divorce proceedings, and Ms. Monroe's three successive attorneys, Francis Londregan, George Gilman, and Igor Sikorsky, Jr., to deprive her of due process and equal protection of the laws during the course of those proceedings. Jurisdiction is alleged to exist pursuant to 42 USC § 1983 and 28 USC § 1343.[2]

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[1] On April 28, 1976, Ms Monroe moved to amend her complaint to add parties plaintiff and defendant. That motion was denied April 30, 1976. The new plaintiffs proceeded to file an independent action, Congdon v. Gray, Civil No. 76-239. This new suit raises issues identical to those decided here now and therefore requires an identical disposition.

A. The State Referee

Insofar as the complaint attempts to state a claim against Referee Troland, it must be dismissed. Since he was presiding at a divorce proceeding in a judicial capacity, he is immune from suit under § 1983. Piesson v. Ray, 386 US 547 (1967); Lombardi v. Bockholdt, Civil No. 75-221 (D. Conn., Nov. 17, 1975, affd mem., (2d Circuit, April 21, 1976).

B. The Remaining Defendants

The two essential allegations to a § 1983 claim are: 1) that the conduct complained ofsubjected the complainant to a deprivation of rights, privileges, or immunities secured by the Constitution and laws of the United States, and 2) that the conduct complained of was done or caused to be done by a person acting under color of state law.

In this conspiracy there are no allegations against state officials except Referee Troland, and since he is immune from suit, he cannot supply the necessary nexus to official activity. Hansen v. Ahlgrimm, 520 F.2d 768 (7th Circuit, 1975). The fact that attorneys in Connecticut are also Commissioners of the Court does not convert their every activity into state action

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2/ The complaint also contains allegations of jurisdiction pursuant to 28 USC 1331 and 42 USC §1983 and 1985, 1986 and 1988. It does not however, state facts sufficient to support jurisdiction under those sections.

for purpose of 1983. See Fine v. City of New York, 529 F. 2d 70, 74 (2d Cir. 1975); Steward v. Meeker, 459 F. 2d 669 (3d Cir. 1972). Consequently this claim of conspiracy must be dismissed against all the named defendants for failure to state a claim upon which relief can be granted as well as for lack of jurisdiction. Lombardi v. Buckholdt, Civil No. H 75-221 (D. Conn. Nov. 17, 1975), aff'd mem., (2d Cir. April 21, 1976).

II. The Grievance Committee Conspiracy

In this claim, Ms Monroe alleges that when she brought charges against the attorneys involved in her divorce action to the grievance committee of New London and Hartford Counties, the members of those committees refused to prosecute her complaints, and thus denied her due process and equal protection of the laws. She further alleges that this refusal to act on her complaints was a part of a larger conspiracy on the part of the grievance committee to refuse to investigate all complaints against lawyers made by private individuals. She also alleges that Judge Santaniello, of the Connecticut Superior Court, is equally liable for at least condoning, and at most participating in the conspiracy. Finally, she has included L. Patrick Gray in her claim as an example of an attorney who, she claims, should have been disciplined by the New London County Grievance Committee. Jurisdiction is alleged to exist pursuant to 42 USC 1983 and 28 USC 1343.

A. The Judge

The complaint against Judge Santaniello must be dismissed, as he is immune from suit under § 1983. Pierson v. Ray, 386 US 547 (1967).

B. The Grievance Committees

The grievance committees exist pursuant to Connecticut statute, Conn. Gen. Stat. Ann. § 51-90 (1960), and their members perform a public function.[3] It may be assumed that the state action requirement of §1983 has been met. However, the plaintiffs have failed to state a constitutional right of which they have been deprived because of the action or inaction of the grievance committees. To the extent that the plaintiffs have suffered harm at the hands of their attorneys, they are entitled to seek relief in the state courts. Whatever cause of action they may have against those lawyers "whether sounding in professional malpractice, tort, or otherwise, is one of state law

[3] In Grievance Committee v. Broder, 112 Conn. 263, 265-66, 152 A. 292 (1930), the Connecticut Supreme Court described the function of the grievance committee:

> The grievance committee is in no sense a party to the proceeding but an independent public body charged with the performan e of a public duty in a wholly dis interested and impartial manner.....

insufficient to vest a federal court with jurisdiction over the subject matter." See Fine v. City of New York, 529 F. 2d 70, 74 (2d Cir. 1975).

Nor do they have a consitutional right to demand that the attorneys be criminally prosecuted or professionally disciplined. As Mr. Justice Marshall stated in Linda R. S. v. Richard D., 410 US 614, 619 (1973):

> "The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. (Citations omitted.) Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."

See also Simon v. Eastern Kentucky Welfare Rights Organization, 44 U.S. L.W. 4724, 4730 (U.S. June 1, 1976) (concurring opinion of Justice Stewart).

Since the Supreme Court has held that, as a private citizen, Ms Monroe lacks a judicially cognizable interest in the prosecution of the attorneys, it follows that she cannot state a claim against the grievance committees for denying a right that she does not have. Consequently this claim against the defendant members of the grievance committees[4] must be dismissed for failure to state a claim upon which relief can be granted. Rule

12(b)(6), Fed. R. Civ. P.

No allegation of the complaint can be read to state a claim that any of the plaintiffs suffered personal injury due to the action or inaction of the defendant, L. Patrick Gray. Consequently the complaint must likewise be dismissed against him for failure to state a claim upon which relief can be granted.

III. The Antitrust Conspiracy

The final conspiracy alleged in the complaint is a claim that "the defendants" conspired to restrain the practice of law and to maintain and enforce "illegal minimum fee schedules." Jurisdiction is alleged to exist pursuant to 15 USC § 1, 3, 13, 15, and 25.

Other than the one conclusory allegation, the complaint fails to set forth the essential elements of an antitrust claim. Furthermore, it fails to allege that the plaintiffs suffered any particular injury as a result of the alleged conspiracy. It is settled that such an insufficient pleading, even on the part of a pro se litigant, fails to state a claim upon which relief can be granted. Klebanow v. New York Produce Exchange,

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4/ Henry Harris, William Miner and Edward McKay, as members of the New London County Grievance Committee. Frank Dully, Harold Eisenberg, Albert Bill, and Philip Dunn, as members of the Hartford County Grievance Committee.

344 F. 2d 294, 299-300 (2d Cir. 1965); Arzee Supply Corp. v. Ruberoid Co., 222 F. Supp. 237 (D. Conn. 1963). For this reason, this claim must also be dismissed.

IV. CONCLUSION

Although the complaint in this action names 18 individual defendants and alleges three different conspiracies, it fails to state any claim upon which relief can be granted against any defendant. Consequently the motion of each of the defendants is granted and the action is dismissed in its entirety.

SO ORDERED.

Dated at Hartford, Connecticut, this 25th day of June, 1976.

M. Joseph Blumenfeld
U. S. District Judge

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, Amendment one:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION, Amendment five:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Malitia, when in actual service in time of War or public danger nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb: nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, Amendment Fourteen:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 42, Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

United States Code, Title 42, Section 1985:

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire

to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of the Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in thissection, if one or more persons engagedtherein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

CONNECTICUT GENERAL STATUTES

Section 51-85 Commissioners of the Superior Court. Each attorney-at-law admitted to practice within the state, while in good standing, shall be a commissioner of the superior court and, in such capacity, may, within the state sign writs and subpoenas, take recognizances, administer oaths and take depositions and acknowledgments of deeds.

Section 51-90. Grievance committees; appointment and duties.

At the first regular session or term of the superior court held in each county after the month of July in each year, said court shall appoint one or more grievance committees of such county, each consisting of three members of the bar of such county, engaged in practice, to remain in office until their successors are in like manner appointed, whose duty it shall be to inquire into, investigate and present to said court offenses not occu ing in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the bar residing or practicing in such county, and to investigate and present to said court any person deemed in contempt of court under section 51-88. If a committee does not deem the offense under investigation by it to be sufficiently serious to present such person to the court, such committee may, in its discretion, reprimand such person or cause him to be reprimanded by a judge of the court either in open court or in chambers as such committee and such judge deem proper. Any vacancy in the membership of a grievance committee may be filled in the same manner as the original appointment. If any member of a grievance committee is disqualified or for any reason unable to act in any matter, the presiding judge of the superior court in the county for which such committee was appointed may designate to act in such matter a member of the bar in the same county or a member of a grievance committee from another county.

Section 52-434. Retired judges as state referees. Hearings. Compensation. Trial referees. Appointment of additional referees.

Each judge of the supreme court, each judge of the superior court and each judge of the court of common pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 shall be a state referee during the remainder of his life. The superior court or the court of common pleas may, with the written consent of the parties or their attorneys, refer any case pending before such court in which the issues have been closed to such a state referee who shall have and exercise the powers of the superior court or court of common pleas in respect to trial, judgment and appeal in such cases. Each judge of the circuit court who has ceased to hold office because of retirement other than under provisions of section 51-49 shall be a state referee during the remainder of his life to whom the court of common pleas may, with the written consent of the parties or their attorneys, refer any case pending in such court in which the issues have been closed. Such referee shall hear such case and report the facts to the court by which the case was referred. Each judge of the juvenile court who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 shall be a state referee during the remainder of his life to whom the senior judge of the juvenile court may, with the written consent of the child concerned,

either of his parents or his guardian or his attorney, refer any matter pending in said court. Such referee shall hear such matter and report the facts to the court for the district from which the matter was referred. Each hearing by a state referee shall be held in a suitable room, to be provided by the public works commissioner, in a courthouse in the court where the case is pending unless the parties or their attorneys stipulate in writing that such hearing may be held elsewhere. Such state referee may have the attendance of a sheriff at any hearing before him, and such sheriff or deputy sheriff shall receive the same compensation provided for attendance at regular sessions of the court from which the case was referred which compensation shall be taxed by such state referee in the same manner as similar costs are taxed by the regular judges of the court. Such state referee may compel the attendance of any witness summoned to appear before him at any hearing, in the same manner as attendance of any witness may be compelled in the referring court, and may punish for any act of contempt committed in his presence while engaged in such hearing in the same manner and to the same extent as judges of such court. Each state referee shall receive for acting as such referee or as a single auditor or committee of any court, in addition to his retirement salary, the sum of fifty dollars and his expenses, including mileage, for each day he is engaged, said sums to be taxed by the court making such reference in the same manner as other

court expenses. The chief justice of the supreme court may designate as trial referees, from among the state referees, those to whom cases may be referred, and no case of any adversary nature shall be referred to any referee other than one so designated. The chief justice may also appoint, from qualified members of the bar of the state, so many referees as he may from time to time deem advisable or necessary. No such designation or appointment shall be for a term of more than one year. Each state referee appointed by the chief justice from members of the bar shall receive such reasonable compensation and expenses as may be determined by him.

Superior court has no power to refer any matter to a state referee unless all parties consent. 16 CS 460. Cited. 30 CS 354. Cited. 31 CS 392.

UNITED STATES DISTRICT COURT - DISTRICT OF CONNECTICUT. Rule 2(d) Disbarment.

1. Proceedings initiated in this Court. Any member of the bar of this court may be disbarred, suspended from practice for a definite time, or reprimanded for good cause shown, after opportunity has been afforded such member to be heard. It shall be the duty of the United States attorney to investigate charges against any member of the bar referred to him by a Grievance Committee of the Bar Association of any county of the State of Connecticut, and conduct such investigations as to the professional conduct of members of the bar as

the court shall direct and such as are suggested by information coming to him in his official capacity or from official sources. If as a result of such investigations the United States attorney shall be of the opinion that there has been a breach of professional ethics by a member of this bar, it shall be his duty as an officer of the court having special responsibilities for the administration of justice to file and prosecute a petition that the alleged offender be subjected to appropriate discipline. These, duties, however, with the approval of a judge may be delegated to a member of the legal staff of the Department of Justice specifically designated for the task by the Attorney General.

In The

Supreme Court Of The United States

OCTOBER TERM, 1976

NO. 76-1667

NADINE MONROE, FLOYD RICHARD MONROE and LISA MONROE, Petitioners,

VS.

L. PATRICK GRAY, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, FRANK DULLY, HAROLD EISENBERG, ALBERT BILL, PHILIP DUNN, LOUIS WOOL, ANDREW BRAND, FRANCIS LONDREGAN, GEORGE GILMAN, IGOR SIKORSKY, JR., individually, and as Commissioners of the Superior Court, and members of the New London County and Hartford County Grievance Committees in their official capacity; SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm; THOMAS TROLAND, ANGELO SANTANIELLO, individually and as state referee and state judge, respectively; FLOYD MONROE and MARTIN GOTTESDIENER, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, L. PATRICK GRAY, LOUIS C. WOOL, ANDREW BRAND and SUISMAN, SHAPIRO, WOOL & BRENNAN IN OPPOSITION

HARRY CONGDON, LOUIS CONGDON, JANET CONGDON, LOIS CONGDON CHURCHILL, KEVIN LEBOVITZ, KEVIN LEBOVITZ, JR., and ROXANNE LEBOVITZ,

Petitioners.

VS.

L. PATRICK GRAY, LOUIS WOOL, LOUIS MARUZO, ROY L. SMITH, MELVIN SCOTT, JOHN COLLERAN, JOHN ELLSWORTH, EDWARD LAVALLEE, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, individually, and as Commissioners of the Superior Court, and the members of the New London County Grievance Committee in their official capacity; SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm; ABRAHAM BORDON, individually and as state referee; WILLIAM BEEBE, JOHN MAZER, JOHN FIRGELEWSKI, JOHN MAXWELL, individually and as Selectmen of the Town of Lyme; FRANK NASTI, JR. and STELLA PETRIE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, L. PATRICK GRAY, LOUIS C. WOOL, ANDREW BRAND and SUISMAN, SHAPIRO, WOOL & BRENNAN, IN OPPOSITION

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June 10, 1977

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1667

NADINE MONROE, FLOYD RICHARD MONROE and LISA ALLEN MONROE,

Petitioners,

VS.

L. PATRICK GRAY, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, FRANK DULY, HAROLD EISENBERG, ALBERT BILL, PHILIP DUNN, LOUIS WOOL, ANDREW BRAND, FRANCIS LONDREGAN, GEORGE GILMAN, IGOR SIKORSKY, JR., individually, and as Commissioners of the Superior Court, and members of the New London County and Hartford County Grievance Committees in their official capacity; SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm; THOMAS TROLAND, ANGELO SANTANIELLO, individually, and as state referee and state judge, respectively; FLOYD MONROE and MARTIN GOTTESDIENER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, L. PATRICK GRAY, LOUIS C. WOOL, ANDREW BRAND and SUISMAN, SHAPIRO, WOOL & BRENNAN IN OPPOSITION

AND (cont.)

HARRY CONGDON, LOUIS CONGDON, JANET CONGDON, LOIS CONGDON CHURCHILL, KEVIN LEBOVITZ, KEVIN LEBOVITZ, JR., and ROXANNE LEBOVITZ,

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L. PATRICK GRAY, LOUIS WOOL, LOUIS MARUZO, ROY L. SMITH, MELVIN SCOTT, JOHN COLLERAN, JOHN ELLSWORTH, EDWARD LAVALLEE, HENRY HARRIS, WILLIAM MINER, EDWARD McKAY, individually, and as Commissioners of the Superior Court, and the members of the New London County Grievance Committee in their official capacity; SUISMAN, SHAPIRO, WOOL & BRENNAN, a law firm; ABRAHAM BORDON, individually and as state referee; WILLIAM BEEBE, JOHN MAZER, JOHN FIRGELEWSKI, JOHN MAXWELL, individually and as Selectmen of the Town of Lyme; FRANK NASTI, JR. and STELLA PETRIE,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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OPINIONS BELOW

The opinion of the United States District Court for the District of Connecticut is unreported but is reprinted in the appendix to Petitioners' Brief at pp. 2a-9a. The opinion

of the United States Court of Appeals for the Second Circuit is unreported, the Court having affirmed the District Court from the bench immediately after the conclusion of oral argument. Its order is reprinted in the appendix to Petitioners' Brief at p. 1a.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Did the District Court err in dismissing the Complaints against these Respondents on the ground that they failed to allege a cause of action upon which relief could be granted under the civil rights laws of the United States?

2. Did the District Court err is dismissing the Complaints against these Respondents on the ground that they failed to allege a cause of action upon which relief could be granted under the antitrust laws of the United States?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Insofar as the Petitioners' Complaint purports to allege a violation of their civil rights, 42 U.S.C. ss 1983 and 1985 are set forth in the Petition at p. 11a. Additional references to the United States Constitution, to the Connecticut General Statutes and to the Rules of the United States District Court for the District of Connecticut are set forth in the Petition at pp. 10a through 17a. However, these Respondents do not concede that these references are relevant to this action or that Petitioners have standing to assert them. It is noted that the antitrust laws of the United States are not cited in the Petition.

STATEMENT

This action was commenced in the United States District Court for the District of Connecticut, Docket No. H-76-91, by the Petitioner, Nadine Monroe, individually and in her capacity as mother, next friend and natural guardian of her children, Fred Richard Monroe and Lisa Allen

against, among others, these Respondents, L. Patrick Gray, Louis C. Wool, Andrew Brand and their law partnership, Suisman, Shapiro, Wool & Brennan, claiming that they had conspired with the Petitioner's former husband, other named attorneys who had previously represented the Petitioner and two Connecticut judges to deprive the Petitioners of their civil rights during a divorce action in the State of Connecticut to which the Petitioner Monroe was a party. The Complaint also claimed violations by these Respondents, and others, of the antitrust laws of the United States albeit without a specification of the alleged violations.

These Respondents filed a Motion to Dismiss the Petitioners' Complaint on the ground that it failed to allege a cause of action upon which relief could be granted in violation of Rule 12(b) of the Federal Rules of Civil Procedure and because the Court lacked subject matter jurisdiction under 28 U.S.C. § 1343 or under the antitrust laws of the United States.

The other Respondents joined in this Motion to Dismiss.

The Petitioners moved for permission to amend the Complaint by adding additional plaintiffs. This motion was denied on the ground that the proposed additional plaintiffs had no interest in the specific claims alleged by the Petitioner Monroe. A second motion to amend the Complaint was filed, adding as a new defendant, the Hartford County Bar Grievance Committee, and restating the claims. This motion to amend was allowed by the Court. These Respondents filed a Motion to Dismiss the Amended Complaint for the same reasons enunciated in their original motion.

The Petitioners, Harry Congdon, et al, in Docket No. H-76-239, commenced a companion action which alleged substantially the same claims against the Defendant L. Patrick Gray and made various claims against the other attorneys named in the original Monroe case. On June 25, 1976, the District Court granted the Motion to Dismiss of each of the Defendants in both Docket Nos.

H-76-91 and H-76-239 dismissing the actions in each. On June 30, 1976, judgment entered in favor of all Defendants dismissing the Complaints.

An appeal was taken in both cases to the United States Court of Appeals for the Second Circuit. On February 14, 1977, that Court entered an order affirming the District Court's judgment dismissing these actions.

THE COMPLAINT -- PETITIONER MONROE, ET AL
DISTRICT COURT DOCKET NO. H-76-91

The Complaint of the Petitioners Monroe purports to allege a violation of the rights, privileges and immunities guaranteed them by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution in violation of 18 U.S.C. §§ 241 and 242 and 42 U.S.C. §§ 1983 and 1985. It also purports to allege violations of 15 U.S.C. §§ 1, 3, 13, 15 and 25, the anti-trust laws of the United States, although no particular violations are set forth. Under the alleged civil rights violations, Petitioners enumerated so-called "overt acts" on Pages 3 through 10 of the Complaint. An examination

of these "overt acts" insofar as they relate to the Respondents Wool and Brand indicate that all of the allegations against these Respondents arise out of their activities as attorneys while representing Mrs. Monroe's former husband, the Respondent Floyd Monroe. These allegations all focus on the negotiations and ultimate disposition of the divorce between the Monroes. Interwoven through these allegations are claims directed toward the Respondent L. Patrick Gray, which purport to arise out of his duties and activities while he was the acting Director of the Federal Bureau of Investigation. These allegations in no way relate to the main thrust of the Complaint, have no interrelationship with the same and appear to have no purpose other than to bring a newsworthy party into the litigation. The motion to dismiss on behalf of Respondents Wool, Brand and Gray and their law firm asserted that insofar as these Respondents are concerned, the Petitioner Monroe was not entitled to maintain an action in the United States District Court under 42 U.S.C. §§ 1983 and 1985 because

these Respondents were not "public officials" within the meaning of the statute, there was no "state action" alleged to support a civil rights claim and there was no allegation of a conspiracy with public officials within the reach of the statute. Additionally, it was claimed that the Complaint simply fails to make any allegations against any of the Respondents which are proscribed by the antitrust laws of the United States.

THE COMPLAINT -- PETITIONER CONGDON, ET AL, DISTRICT COURT DOCKET NO. H-76-239

The Complaint filed on behalf of the Petitioners Congdon, et al tracks almost identically that filed by the Petitioners Monroe. Once again, the allegations relate to a private divorce action interspersed with claims against Respondent L. Patrick Gray relating to his duties as acting Director of the FBI. In addition, allegations are directed against the Respondent Wool by Petitioner Lebovitz that relate to Wool's representation of Lebovitz in a domestic dispute. The District Court viewed the allegations of this

Complaint as alleging the same type of claim as set forth in the Monroe Complaint. In its ruling on the motion to dismiss filed in the Monroe action, the Court made the same applicable to the Congdon Complaint as well since basically the same legal points were contained therein.

ARGUMENT

The Petitioners' Complaint purported to allege civil rights and antitrust conspiracies. It was based upon these allegations that the District Court sustained the Motion to Dismiss filed by these Respondents. The Petition for a Writ of Certiorari seems to contain an argument setting forth an attack on the Court's failure to discipline the several attorneys and judges involved. That issue was never framed in the Complaint. Therefore, this Brief in Opposition deals with the issues framed in the Complaint and ruled on by the two Courts below.

I

THE DISTRICT COURT WAS CORRECT IN HOLDING THAT THE COMPLAINTS FAILED TO ALLEGE A CAUSE OF ACTION UNDER THE CIVIL RIGHTS ACT

42 U.S.C. § 1983 imposes liability upon

> Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, ...

In order to sustain a claim under this section of the law, a plaintiff must allege and prove that he has suffered the deprivation of federally protected rights, privileges or immunities as a result of actions allegedly taken by a named defendant. A threshold question is whether or not a complaint sets forth sufficient allegations to constitute "state action." Shirley v. State National Bank of Connecticut, 493 F.2d 739, 741 (2d Cir. 1974). It has been recognized that the Fourteenth Amendment to the United States Constitution applies only to actions of the "states" and not to those actions which are "private".

The "under color of state law" provision in § 1983 is equivalent to the state action requirement of the Fourteenth Amendment. Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 n.7 (1970); United States v. Price, 383 U.S. 787, 794-95 (1966).

Purely private conduct by private individuals cannot give rise to a cause of action under the civil rights act. Timson v. Weiner, 395 F. Supp. 1344 (S.D. Ohio E.D. 1975). In order to bring a private person under the purview of § 1983, the plaintiff must allege active cooperation by the state in the private party's conduct in order for "state action" to be present. Hohensee v. Dailey, 383 F. Supp. 6, 9 (M.D. Pa. 1974). However, the mere use of a state's judicial process is not a sufficient allegation of active cooperation by the state with a private party to establish a civil rights action. Thus, for example, in Hohensee v. Dailey, supra, wherein a landlord brought an eviction action against a tenant, the Court said:

> Reading Plaintiff's complaint as liberally as possible the Plaintiff does not allege that the State of

> Pennsylvania was in any way involved in the supposed deprivation of his Constitutional rights by the Defendants. At most, Hohensee may be interpreted as claiming that the Defendants have utilized the State law to his detriment. The mere fact that an individual utilizes state process against another does not make the actor's conduct cognizable as state action.

Reading the allegations in both Complaints most liberally, the allegations against the Respondents Wool and Brand and their law firm are that they engaged in the representation of a client in connection with divorce proceedings. While Mrs. Monroe may be unhappy with such representation, the Complaints do not rise to the dignity of a civil rights claim against these Respondents. Similarly, dissatisfaction with the result obtained by the Petitioners in the Congdon suit does not support a civil rights claim against their lawyers. Moreover, the Petitioners allege that these Respondents and Mrs. Monroe's attorneys conspired with one another to proceed to judgment in her divorce action before the Honorable Thomas Troland, a referee for the State of Connecticut sitting as the Superior

Court for New London County. Every act performed by a judge in his judicial capacity is immune from damage suits by litigants. A litigant's remedy is by appeal. Dear v. Rathje, 391 F. Supp. 1, 5 (N.D. Ill. E.D. 1975). Judicial immunity is a valid defense under 42 U.S.C. § 1983. Tenney v. Brandhove, 341 U.S. 367 (1951); Pierson v. Ray, 386 U.S. 547 (1967); Lombardi v. Bockholdt, Civil No. H-75-221 (D. Conn. 11/17/75), aff'd mem. (2d Cir. April 21, 1976).

As a logical corollary to the immunity of state judges from civil rights actions, private parties cannot be held liable under § 1983 for conspiring with a state judge who is himself immune from suit under that section. Hansen v. Ahlgrimm, 520 F.2d 768 (7th Cir. 1975). In Meyer v. Lavelle, 389 F. Supp. 972, 976 (E.D. Pa. 1975), the plaintiff brought an action against a state judge, Wisconsin Surety Company and Wisconsin's counsel claiming that they had violated his civil rights in obtaining a judgment against him in a state court. The United States District Court for the Eastern District

of Pennsylvania granted a motion to dismiss against the state court judge on the ground of judicial immunity. It then dismissed the claim against the private parties as well, saying:

> A private person cannot be held liable under Title 42, U.S.C. § 1983 unless his wrongful action was done under color of state law or state authority. Further, a private person alleged to have conspired with a state judge and prosecuting attorney who are entitled to immunity cannot be held liable, since he is not conspiring with persons acting under color of law "against whom [plaintiff] could state a valid claim" under 42 U.S.C. § 1983.

It was under this rationale that the District Court held that an allegation of a conspiracy with Referee Troland, who was himself immune from suit, could not supply the "necessary nexus to official activities". Memorandum of Decision, p. 3; Petitioners' Appendix, p. 4a.

Similarly the claim of a civil rights conspiracy by these Respondents with the Petitioners own attorneys is without merit. The mere fact that attorneys in Connecticut are also Commissioners of the Superior Court does not convert

all of their activities into state action for purposes of a lawsuit brought under § 1983. Fine v. City of New York, 529 F.2d 70, 74 (2d Cir. 1975); Steward v. Meeker, 459 F.2d 669 (3d Cir. 1972). In Kovacs v. Goodman, 383 F. Supp. 507, 509 (E.D. Pa. 1974), the Court granted a motion to dismiss a civil rights action against defendants who were all private attorneys saying:

> It is settled that "lawyers who participate in a trial of private state court litigation are not state functionaries acting under color of state law" Skolnick v. Martin, 317 F.2d 855, 857 (C.A. 7, 1963); that "in private litigation the state merely furnishes the forum and has no interest one way or another in the outcome," Bottone v. Lindsley, 170 F.2d 705, 706 (C.A. 10, 1948); and that although a private attorney is an "officer of the court", he is not an official of any state, Steward v. Meeker, 459 F.2d 669 (C.A. 3, 1972).

Several Courts of Appeal have ruled that private attorneys handling litigation are not acting under color of state law for purposes of civil rights claims. Steward v. Meeker, supra; Hill v. McClellan, 490 F.2d 859 (5th Cir. 1974); Cooper v. Wilson, 309 F.2d 153 (6th Cir. 1962); Jones v. Jones, 410 F.2d 365 (7th Cir. 1969);

Haldane v. Chagnon, 345 F.2d 601 (9th Cir. 1965). See also Hamilton v. Jamison, 355 F. Supp. 290 (E.D. Pa. 1973); Peake v. County of Philadelphia, Pennsylvania, 280 F. Supp. 853 (E.D. Pa. 1968).

All of the allegations involving the Respondents Wool and Brand and their law firm involve their dealings as attorneys. As such, they are inadequate to sustain a cause of action under § 1983. The allegations involving the Respondent Gray are simply interspersed with the allegations relating to the divorce proceedings with no apparent connection. It appears that these allegations add nothing to the substance of the Complaints and are included simply for the purpose of engendering newspaper comment. Therefore, it is apparent that no cause of action has been alleged which entitled the Petitioners to relief under § 1983.

Insofar as a cause of action under 42 U.S.C. § 1985 is concerned, the Complaints are devoid of any factual allegation which bring this statute into play. Section 1985 deals with conspiracies to prohibit officers of the United States from

performing their duties. There are no allegations in the Complaints against any of these Respondents or for that matter any of the other defendants which raise a claim of a § 1985 violation.

Accordingly, it is respectfully submitted that the District Court was correct in dismissing the Complaints insofar as they purported to allege a civil rights claim against these Respondents.

II

THE DISTRICT COURT WAS CORRECT IN DISMISSING THE ALLEGED ANTITRUST CONSPIRACY.

The Complaints rather vaguely alleged violations of the antitrust laws of the United States by claiming that the Defendants conspired to "knowingly and willingly restrain the practice of law in interstate trade, to deny the plaintiffs and the general public the benefits of constitutional and legal protections and set minimum and enforced illegal minimum fee schedules." This lengthy, conclusory allegation did not set forth the essential factual elements of an

antitrust claim. Indeed it is assumed that the thrust of this portion of the Complaint was really aimed at the two grievance committees who were named as defendants. Nowhere do the Complaints allege that the Respondents Gray, Wool, Brand or their law firm engaged in any actions which were violative of the antitrust laws. Therefore, it is respectfully submitted that the District Court was correct in holding that even in the case of a pro se litigant there must be a sufficient factual allegation in order to sustain a claim of an antitrust violation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1667

NADINE MONROE, ET ALS,
Petitioners

v.

L. PATRICK GRAY, ET ALS,
Respondents

and

HENRY CONGDON, ET ALS,
Petitioners

v.

L. PATRICK GRAY, III, ET ALS,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, STATE JUDGES, REFEREES AND GRIEVANCE COMMITTEES IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, STATE JUDGES, REFEREES AND GRIEVANCE COMMITTEES IN OPPOSITION

QUESTION PRESENTED FOR REVIEW

Should not a petition for certiorari be denied when the United States District Court, based upon judicial immunity and additional grounds, dismissed a Civil Rights suit for damages and further relief against State judges, referees, Grievance Committee members and others?

STATEMENT OF THE CASE

This action was inspired by the dissatisfaction of plaintiff-petitioner Nadine Monroe with the participation of various individuals in a lengthy state court divorce proceeding. The original federal Complaint was filed *pro se* on February 9, 1976 in Civil No. H 76-91 by the plaintiff-petitioner Nadine Monroe and her two children, Floyd, Jr. and Lisa, alleging conspiracies to deprive them of their constitutional rights, and one conspiracy in violation of the antitrust laws of the United States. On April 28, 1976 a Motion to Amend the Complaint was filed to add a number of additional plaintiffs and defendants. This motion was denied on the grounds that none of the additional plaintiffs had any interest in the specific case nor did any of the proposed defendants cause the plaintiffs any injury. The denial of this motion prompted an independent suit by the rejected plaintiffs, Civil No. H 76-239, which raised issues identical to those in the *Monroe* suit and which was disposed of with the *Monroe* suit in one ruling by the Court below.

The present Further Amended Complaint in Civil No. H 76-91 was filed on May 12, 1976 wherein the plaintiffs sought money damages and other relief from all the defendants. Each of the defendants filed motions to dismiss which were granted. An appeal was taken to the United States Court of Appeals for the Second Circuit which, in a judgment filed on February 14, 1977, affirmed the judgment of the District Court on the opinion of said Court with costs to be taxed against the appellants. (App. p. 1a) This petition for a writ of certiorari seeks a review of the judgment of the Second Circuit, alleging jurisdiction under 28 U.S.C. 1254(1).

ARGUMENT

The District Court analyzed the various Complaints to disclose three separable claims and addressed each individually.

I. THE DIVORCE CONSPIRACY

The original conspiracy was alleged to have arisen during state court divorce proceedings between the plaintiff-petitioner Ms. Monroe and her husband. It was also claimed that Mr. Monroe, his accountant, and his lawyers conspired with Troland, the Presiding Referee of the New London County Superior Court, and the named attorney for Ms. Monroe to deprive her of due process and equal protection of the law. Jurisdiction was alleged to exist pursuant to 28 U.S.C. 1331, 1343, 42 U.S.C. 1983, 1985, 1986 and 1988. The Court below was correct in summarily dismissing the claims under 28 U.S.C. 1331 and 42 U.S.C. 1985, 1986 and 1988 on the grounds that the Complaint failed to state facts sufficient to support jurisdiction under those sections. (App. p. 4a, f.n.2) Jurisdiction thus was treated under 42 U.S.C. 1983 and 28 U.S.C. 1343.

A. State Referee

Inasmuch as the allegations concerning Referee Troland indicate that the actions complained about arose out of his presiding at a divorce proceeding in a judicial capacity, the Court was correct in dismissing this Complaint against him on the grounds of judicial immunity.

In Connecticut, a State Referee is usually a retired judge who exercises the judicial power of the Court on cases referred to him by other judges.

Section 52-434 of the Connecticut General Statutes provides in pertinent part that:

"Each judge of the supreme court, each judge of the superior court and each judge of the court of common pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 shall be a state referee during the remainder of his life. The superior court or the court of common pleas may, with the written consent of the parties or their attorneys, refer any case pending before such court in which the issues have been closed to such a state referee who shall have and exercise the powers of the superior court or court of common pleas in respect to trial, judgment and appeal in such case. . . ."

Section 52-434a(a) provides that:

"In addition to the powers and jurisdiction granted to state referees under the provisions of section 52-434, a chief justice or judge of the supreme court, a judge of the superior court or a judge of the court of common pleas who has ceased to hold office as justice or judge because of having retired and who has become a state referee and has been designated as a trial referee by the chief justice of the supreme court shall have and may exercise, with respect to any civil matter referred by the chief court administrator, the same powers and jurisdiction as does a judge of the court from which such proceedings were referred."

This brings us to *Pierson* v. *Ray*, 386 U.S. 547, 553 (1967), where this Supreme Court stated:

". . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). This immunity applies even when the judge

is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in Bradley v. Fisher, supra, 349, note at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation."

As stated by Chief Judge Learned Hand in an earlier Second Circuit case, *Gregoire* v. *Biddle*, 177 F.2d 579 (2d Cir. 1949), *cert. den.* 339 U.S. 949, in extending immunity to the United States Attorney General and other law enforcement and immigration officials,

". . . to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties."

177 F.2d at 581.

This doctrine was recently reaffirmed in *Imbler* v. *Pachtman*, —— U.S. ——, 96 S.Ct. 984 (1976). See also *Lombardi* v. *Buckholdt*, Civ. No. H-75-221, *aff'd mem.*, (2d Cir. April 21, 1976). Clearly, then, Referee Troland is immune from a 1983 action.

II. THE GRIEVANCE COMMITTEE CONSPIRACY

This alleged conspiracy involves a number of claims. Ms. Monroe alleges a denial of due process and equal protection as a result of the refusal of the Grievance Committees of New London and Hartford Counties to prosecute her complaints against the attorneys involved in her state divorce action. She alleges that this refusal to act by the Grievance Committees was part of a major conspiracy of refusing to investigate complaints against lawyers made by private individuals. Also, she alleges that Judge Angelo Santaniello of the Connecticut Superior Court participated in this conspiracy by protecting the Grievance Committee of New London County and by not advising her of all of her rights. Jurisdiction is alleged to exist pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343.

A. The Judges

Inasmuch as the allegations against Judge Santaniello are directed to his actions in an official capacity and there are no allegations that he was acting without authority, the District Court was correct in dismissing the Complaint against him as he is immune from suit under 1983 actions. *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Imbler* v. *Pachtman*, —— U.S. ——, 96 S.Ct. 984 (1976).

B. The Grievance Committees

The main complaint against the Grievance Committees concerns their alleged lack of disciplinary action for the wrongdoings of private attorneys engaged by the plaintiffs-petitioners. The committees are appointed by the Superior Court. It is the duty of the committees to inquire into, investigate and present to the Court offenses concerning the members of the Bar. Section 51-90, General Statutes. The State

Supreme Court has described the function of the committees as follows:

> ". . . The grievance committee is in no sense a party to the proceeding but an independent public body charged with the performance of a public duty in a wholly disinterested and impartial manner, . . ."
>
> *Grievance Committee* v. *Broder*, 112 Conn. 263, 265-266 (1930).

The Grievance Committees were certainly not responsible for any of the alleged acts of misconduct that the lawyers may have committed. For these alleged wrongs, the plaintiffs-petitioners were and are entitled to seek relief in the state courts. As stated by the United States Court of Appeals for the Second Circuit in *Fine* v. *City of New York*, 529 F.2d 70, 74 (2d Cir. 1975):

> ". . . Whatever cause of action he might have against his lawyer, whether sounding in professional malpractice, tort, or otherwise, is one of state law insufficient to vest a federal court with jurisdiction over the subject matter. . . ."
>
> See also: *Chaney* v. *State Bar of California*, 386 F.2d 962 (9th Cir. 1967), *cert. den.* 390 U.S. 1011.

Nor do the plaintiffs-petitioners have a constitutional right to demand that the attorneys be criminally prosecuted or professionally disciplined. As Mr. Justice Marshall stated in *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 619 (1973):

> "The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. (Citations

omitted.) Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another. . . ."

Since the Supreme Court has held that as a private citizen Ms. Monroe lacks a judicially cognizable interest in the prosecution of the attorneys, the District Court was correct in dismissing this claim for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure. She cannot state a claim for denying her rights which she does not have.

III. NO VALID ANTITRUST CLAIM STATED

In their Complaint, the final conspiracy alleged by the plaintiffs-petitioners is the claim that the defendants conspired to "knowingly and wilfully restrain the practice of law, an interstate trade, to deny the plaintiffs and the general public the benefits of constitutional and legal protections, and set, maintain and enforce illegal minimum fee schedules; in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and Title 15, U S C, Sections 1, 3, 13, 15 and 25, all of which was in violation of Title 18, U S C, Section 371; . . ."

Other than the one conclusory allegation, the Complaint fails to set forth the essential elements of an antitrust claim and it fails to allege that the plaintiffs-petitioners suffered any particular injury as a result of the alleged conspiracy. Such an insufficient pleading, even on the part of a *pro se* litigant, fails to state a claim upon which relief can be granted. As this Court stated in the *Arzee* case,

> "True, the complaint does allege that the purpose of the conspiracy was 'arbitrarily, unlawfully, unreasonably and knowingly [to] prevent, suppress and eliminate competition' and to 'establish and maintain unreasonably high, excessive, monopolistic and non-competitive prices'. But this is not enough. These are merely conclusions of the pleader. Conclusions of law are not enough to state a claim upon which relief may be granted. Alexander v. Texas Co., supra at 40, and cases cited therein; United Grocers' Co. v. Sau-Sea Foods, 150 F. Supp. 267, 269 (S.D. N.Y. 1957)."

Arzee Supply Corp. of Conn. v. *Ruberoid Co.*, 222 F. Supp. 237, 241 (D. Conn. 1963).

See also: *Klebanow* v. *New York Produce Exchange*, 344 F.2d 294 (2d Cir. 1965).

The petitioners make much of the *United States* v. *American Bar Association* complaint as a reason for the granting of the writ of certiorari. They also rely on the cases of *Goldfarb* v. *Virginia Bar*, 421 U.S. 773, 95 S.Ct. 2004 (June 16, 1975) and *Bates* v. *Arizona*, 555 P.2d 640, Prob. Jur. Noted, 97 S.Ct. 53, Oct. 4, 1976, No. 76-316. The *American Bar* matter is still in the pleading stage. The petitioners present no evidence of price-fixing to bring them within the *Goldfarb* case, nor do they present any evidence of harm to them by controlled advertising to bring them within the *Bates* case. Furthermore, there is no evidence of any interstate activities by these defendants-respondents with respect to the underlying state divorce proceedings.

IV. MISCELLANEOUS CONSIDERATIONS

A. Federalism and Comity

In addition, the Complaint raised the question of a "back door" contravention of well established principles of federalism and comity. As stated only recently by the United States Supreme Court:

"The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence. . . ."

Huffman v. *Pursue*, —— U.S. ——, 95 S.Ct. 1200 at 1208 (March 18, 1975).

These considerations have been held controlling even where a state Court judgment has already been rendered, and not merely when the state trial is still underway. See *id.* at 1210. The Court has also previously ruled:

". . . It is settled that the prohibition of § 2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 9, 60 S.Ct. 215, 218, 84 L.Ed. 537 (1940); Hill v. Martin, 296 U.S. 393, 403, 56 S.Ct. 278, 282, 80 L.Ed. 293 (1935). . . ."

Atlantic Coast Line R. Co. v. *Brotherhood of Locomotive Engineers, et al*, 398 U.S. 281 at 288 (1970).

See also: *Brown* v. *Chastain*, 416 F.2d 1012 (5th Cir. 1969), *cert. den.* 397 U.S. 951.

CONCLUSION

It is clear that there are no special and important reasons for granting a writ of certiorari in this case, a writ which, of course, is not a matter of right but of sound judicial discretion. An example of the insubstantiality of the underlying claims is clearly demonstrated by the unwarranted attack upon L. Patrick Gray on pages 4, 6, 7 and 8 of the Petition

with no factual allegations that he caused these petitioners any harm. The decision by the District Court and its affirmance by the United States Court of Appeals for the Second Circuit are fully consistent with applicable rulings of this Court. There is absolutely no showing that the lower courts have departed from the accepted and usual course of judicial proceedings so as to call for the exercise of this Court's power of supervision, within the meaning of Rule 19, Revised Rules of the Supreme Court.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit in this case is completely without merit and should be denied.

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